

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
MISS JONES, LLC,

Civil Action No. 7:17-cv-01450-NSR

Plaintiff,

- against -
-STATEMENT OF UNCONTESTED FACTS(see p. 4) KEITH STILES, MOY RLTY, LLC, VAN
HASSELT AUTO SERVICE,Defendants
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/31/2022

Pursuant to the requirements of Rule 56 of the Federal Rules of Civil Procedure, defendant KEITH J. STILES submits this statement of the facts material to this action which he believes to be uncontested:

1) The citizenship of all plaintiffs is diverse from the citizenship of all defendants in that upon information and upon information and belief, Plaintiff is a limited liability company organized under the laws of Delaware and a corporate citizen of the State of Florida and none of the defendants is a citizen of the State of Florida or Delaware. *[As stated in Plaintiff's complaint]*

2) On and prior to July 7, 2007, defendant KEITH J. STILES was the owner of a premises at 136 Elmwood Road, South Salem, New York, also known on the official tax map of the Town of Lewisboro, Westchester County, New York as Section 47, Block 10056, Lot 3. *[As stated in Plaintiff's complaint]*

3) On or about July 7, 2007 defendant KEITH J. STILES took a credit line mortgage loan for a line of credit up to the amount of \$350,000 from NATIONAL CITY BANK, which loan was evidenced by an Equity Reserve Agreement and a Credit Line Mortgage, true copies of which are attached to the Complaint in this action. *[As recited in complaint]*

4) The solicitation to take the credit line was received by Mr. STILES in New York and he executed and acknowledged the loan documents at his home in Westchester County, New York before a

New York notary public. Substantially the full amount of the credit line was advanced to the said defendant by NATIONAL CITY BANK. *[Affidavit of Keith Stiles and as stated in complaint]*

5) Monthly payments of interest were required to be made by the said defendant to NATIONAL CITY BANK, pursuant to the terms of the Equity Reserve Agreement, in amounts and at rates prescribed in the Agreement. *[The document is attached to the complaint]*

6) The mortgage instrument was duly recorded in the office of the Westchester County Clerk on October 25, 2007 under Control Number 472920098. *[Document is attached to the complaint]*

8) Defendant KEITH J. STILES made monthly payments of interest to NATIONAL BANK pursuant to the Agreement in the years 2007 and 2008. *[affidavit of Stiles, affidavit of Morris]*

9) The last payment made by defendant KEITH J. STILES to NATIONAL CITY BANK was on July 31, 2008. *[Affidavit of Morris]*

10) Since July 31, 2008 defendant KEITH J. STILES made no further payments of any kind to NATIONAL CITY BANK, nor to any successor in interest to NATIONAL CITY BANK. *[Affidavit of Stiles, affidavit of Morris]*

11) Since July 31, 2008 defendant KEITH J. STILES has made no statement acknowledging the continuing validity of the debt to NATIONAL CITY BANK nor to any of its successors in interest. *[Affidavit of Stiles, par.8]*

12) Since July 31, 2008 defendant KEITH J. STILES has not applied to NATIONAL CITY BANK nor to any of its successors in interest for a modification, extension or reinstatement of the mortgage. *[Affidavit of Stiles, par. 8]*

13) The note and the mortgage contain terms with respect to nonpayment and default, as recited in the following numbered paragraph of the complaint:

24. Paragraph 9 of the Mortgage, entitled "Remedies on Default" provides that "[l]ender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default." *[Complaint, par. 24]*

14) Over 8 1/2 years have elapsed since the date of the last payment on the debt and prior to

the commencement of this action on February 27, 2017 and defendant STILES has been in default for that entire period. *[Affidavit of Stiles, affidavit of Morris]*

15) On July 11, 2009 NATIONAL CITY BANK mailed to defendant KEITH STILES at the address of the mortgaged premises a letter in which the BANK stated, among other things:

“Effective immediately, the Account is hereby accelerated and we hereby demand payment in full of the entire amount owing on the Account as described below.

As of the date of this letter your Account has an accelerated balance in full owing of \$347,561.96. ...

Since the balance of your Account is accelerated, nothing less than full payment of the entire indebtedness is now acceptable.”

[Answer, par. 8, Affidavit of Stiles, par. 6, affidavit of Morris, par. 11]

16) On October 24, 2009 NATIONAL CITY BANK mailed to defendant KEITH STILES a letter containing identical wording to that in the letter dated July 11, 2009. *[Affidavit of Stiles, par. 6, affidavit of Morris, par. 11]*

17) On December 14, 2009 PNC BANK, successor to NATIONAL CITY mailed to defendant KEITH STILES a letter containing identical wording to that in the letter dated July 11, 2009. *[Affidavit of Stiles, par. 6, affidavit of Morris, par. 11-12]*

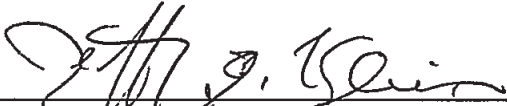
18) In September, 2010 PNC BANK assigned the mortgage by an instrument in writing to a new holder, DBI/ASG MORTGAGE HOLDINGS, LLC. *[Complaint, par. 16]*

19) From the date of the assignment by PNC BANK until August, 2016, neither the assignor nor the assignee sent to defendant KEITH STILES the mortgage transfer disclosures of the type required by 12 CFR § 1026.39 or other notice of assignment, and the assignment had not been recorded. *[Affidavit of Stiles, par. 7, Complaint, par. 17]*

20) Over 7 years have elapsed since the date of each of the three acceleration letters and prior to the date Plaintiff's claim was interposed by filing the complaint on February 27, 2017. *[Affidavit of Stiles, par. 9]*

21) The New York Civil Practice Law and Rules provides in Sections 206(a) and 213(4) that the time within which a mortgage foreclosure action must be commenced is six years [*Memorandum of Law*]

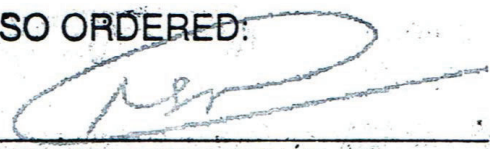
Dated: White Plains, New York
January 11, 2021


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This document is not a motion but a Rule 56.1
Statement in support of a motion (see ECF No. 177).
Therefore, this motion is terminated. Clerk of Court is
requested to terminate the motion only at ECF No. 178.

Dated: White Plains, NY
March 31, 2022

SO ORDERED:


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE